

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff/ Counter-Defendant

v.

ASHLAND CHEMICAL COMPANY, THE
BOEING COMPANY, CERTAINTEED
CORPORATION, ALLIANT TECHSYSTEMS
INC., AS SUCCESSOR TO CORDANT
TECHNOLOGIES INC., ALLIANT TECH-
SYSTEMS, AS SUCCESSOR TO HERCULES,
INC., HALLMARK CARDS, INC.,
HONEYWELL FEDERAL MANUFACTURING
AND TECHNOLOGIES, LUCENT
TECHNOLOGIES INC.,
TYCO HEALTHCARE/MALLINCKRODT
AND BNSF RAILWAY COMPANY

Defendants

Civil Action No. 06-1378-JTM

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States, and on behalf of the Administrator of the United States Environmental Protection Agency (EPA), alleges:

INTRODUCTION

1. This is a civil action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. (CERCLA), for reimbursement of response costs incurred by the United States in response to the release or threat

of release of hazardous substances into the environment from the Chemical Commodities, Inc. Superfund Site in Olathe, Kansas (Site).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and defendants pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims arose in this District and releases and/or threatened releases of hazardous substances occurred in this District.

DEFENDANTS

4. Defendant Ashland Inc. ("Ashland") is a Kentucky corporation.

5. Defendant Alliant Techsystems Inc. ("Alliant") is a Delaware corporation with its principal place of business in New Jersey and doing business in the State of Kansas.

6. Defendant BNSF Railway Company ("BNSF") is incorporated in Delaware.

7. Defendant The Boeing Company ("Boeing") is a Delaware corporation with its principal place of business in California and doing business in the State of Kansas.

8. Defendant CertainTeed Corporation ("CertainTeed") is a Delaware corporation.

9. Defendant Hallmark Cards, Inc. ("Hallmark") is a Missouri corporation.

10. Defendant Honeywell Federal Manufacturing and Technologies, LLC (“Honeywell”) is a Delaware limited liability corporation and a division of Honeywell Aerospace which is a division of Honeywell International Inc.

11. Defendant Lucent Technologies Inc. (Lucent) is a Delaware corporation, with its principal place of business in New Jersey.

12. Defendant Mallinckrodt Inc. (“Mallinckrodt”) is incorporated in New York.

GENERAL ALLEGATIONS

A. THE SITE

13. The Site is the former location of a chemical storage, distribution and recycling facility, owned and operated by Chemical Commodities, Inc. (CCI) at 300-320 South Blake Street, Olathe, Johnson County, Kansas. The Site consists of approximately 1.5 acres of land which is surround by commercial and residential properties. The Site is bounded on the east by railroad tracks owned and operated by Burlington Northern Railroad. Single-family residences are located north of the Site and west of the Site on South Keeler Street. The Site is bounded on the south by a vacant lot.

14. At the time EPA began investigating the Site, the Site contained a main warehouse building that had been used for office space and repacking and recycling chemicals; several smaller sheds, two 40 feet storage trailers, two (10 by 15 feet) truck boxes, and four verticle 8,000 gallon storage tanks all used to store hazardous chemicals; and an open pit area which once contained underground storage tanks, also used to store hazardous chemicals.

15. BNSF or its predecessors have owned the property adjacent to the CCI

facility since 1868. An active BNSF rail line is located on the property. A small piece of the BNSF property is situated within the CCI fence line. Sometime during the 1980s, CCI installed three underground storage tanks on the BNSF property. An investigation in 1985 confirmed that these tanks were leaking their contents, tetrachloroethylene ("PCE") and trichloroethylene ("TCE"), into the groundwater and the tanks were removed by CCI pursuant to a consent order in 1986.

16. In 1968, CCI took an assignment of an existing lease between the St. Louis-San Francis Railway Company (which later merged into BNSF) and Jack M. Ridgway for a parcel of property, approximately 7,350 square feet, located just north of the CCI facility. In April of 1986, the assigned lease was replaced by a new lease between CCI and BNSF. The new lease indicated that the property would be used for "temporary storage of material received." During the period of the lease, CCI stored hazardous substances on the leased property which were later removed in a removal action in 1989

B. EPA INVESTIGATIONS AND RESPONSE ACTIONS

REMOVAL SITE ASSESSMENT

17. In February, 1989, EPA investigated the Site to verify the release and/or threat of a release of hazardous substances at or from the Site, to characterize the contamination on the Site, and to determine whether contamination was migrating off the Site. The investigation found that the Site was heavily contaminated with volatile organic compounds (VOCs) and that contamination had migrated off-site to the neighboring residences. During the course of the investigation, subsurface soil, surface water runoff, ground water, and air samples were collected. An analysis of the samples collected showed:

- a. that subsurface soil was contaminated with PCE, acetone, dichlorobenzene, TCE, 1,2-dichloroethane, 1,1,2,2-tetrachloroethane, benzoic acid and 2-butanone;
- b. that surface water runoff was contaminated with TCE, 1,1,2,2-tetrachloroethane, 1,2-dichloroethane, and 1,1,1-trichloroethane ("TCA"); and
- c. that ground water was contaminated with TCE, carbon tetrachloride, PCE, TCA, 1,2-dichloroethane, acetone, 1,1,2,2-tetrachloroethane, 2-butanone, 1,1-dichloroethane, and 1,2-dichlorobenzene.

Air samples also detected elevated levels of VOCs in the crawl spaces of three neighboring residences.

REMOVAL ACTION

- 18. To stabilize and further characterize the conditions at the site, in 1989, EPA began a phased Removal Action at the Site.
- 19. During Phase I of the Removal Action:
 - a. access to areas of the Site containing hazardous substances and in need of stabilization was restricted and a temporary fire alarm system was installed;
 - b. several hundred deteriorating and/or leaking drums and containers, containing hazardous substances and/or wastes, were inventoried and segregated by chemical compatibility, and the leaking containers were recontainerized;
 - c. the four 8,000 gallon above-ground storage tanks were decontaminated; and

d. the open pit was fenced and covered to prevent surface water infiltration.

20. During Phase II of the Removal Action, the drums and containers of hazardous chemicals were removed and properly disposed off-site.

21. On or about September 28, 1990, EPA approved a waiver of the statutory limits on response actions under Section 104(c)(1)(C) of CERCLA , 42 U.S.C. § 9604(c)(1)(C), so that Phase III removal work could begin.

22. During Phase III of the Removal Action:

a. approximately 309 tons of contaminated surface soil with VOCs exceeding 300 parts per million (ppm) were removed and disposed of off-site;

b. the main warehouse building was decontaminated and approximately 1,320 cubic yards of contaminated soil with VOCs from 100-300 ppm were consolidated in the southwest corner of the main warehouse building and covered with PVC sheeting and two feet of clean soil;

c. the storage sheds were demolished and disposed of off-site; and

d. an interceptor trench was installed along the eastern and northeastern edge of the Site to collect contaminated ground water beneath the Site, so that it can be properly treated and disposed. EPA continues to sample, analyze and dispose of the contaminated groundwater which is collected from the interceptor trench.

23. As a result of releases or threatened releases of hazardous substances at or from the Site, the United States, as of the date this complaint was filed, has incurred in excess of \$3.6 million dollars in response costs, including investigative, administrative and legal

enforcement costs. These costs incurred by the United States are not inconsistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300 et seq.

C. CCI'S OPERATIONS

24. CCI operated the Site from 1951 to 1989. During its years of operation, CCI purchased used and surplus hazardous chemicals from defendants that were repackaged and resold to smaller customers. On information and belief, many of the chemicals purchased by CCI were used, off specification and/or had exceeded their shelf life for their intended purposes.

25. Pending resale or recycling, the chemicals purchased by CCI were stored on-site. Chemicals were stored randomly and haphazardly in the various storage facilities at the Site. Incompatible chemicals were stored in close proximity to one another, and sometimes the chemicals were stored for long periods of time in leaking, deteriorated containers on the exterior grounds of the facility where they were exposed to the elements.

26. Among the hazardous chemicals purchased by CCI from defendants was used TCE. Prior to resale, CCI would recycle the used TCE on-site through a filter press to extract out usable product. The usable product was repackaged and sold to customers, and the unusable byproduct was disposed on-site.

27. Site contamination was caused by the unsafe manner in which chemicals were stored and handled, pending resale, and by spills that occurred when the chemicals were repackaged into smaller quantities for resale. Site contamination was also caused by spills that occurred during the filter press recycling process, and by the disposal of the unusable recycled TCE byproduct on-site.

D. DEFENDANTS' SALES OF HAZARDOUS CHEMICALS TO CCI

(1) AlliantTech Systems, Inc.

28. On information and belief Alliant is the successor in interest to Hercules Aerospace Company, a division of Hercules, Inc. ("Hercules"), Cordant Technologies ("Cordant"), and Thiokol Propulsion Inc., Morton Thiokol Incorporated and Thiokol Inc. (collectively "Thiokol").

29. In 1981, Thiokol sent 2,595 pounds of surplus material to the Site, including 1,1,2 TCE, Ethylene Bromide, Technical Toluene and Methylene Chloride, to CCI from a Thiokol facility in Brigham, Utah.

30. Hercules sent 11,4000 pounds of surplus or used TCE to the CCI in 1997 from the Radford Army Ammunition Plant ("RAAP") in Radford, Virginia, a Department of Defense facility, for which Hercules was the contract operator.

(2) Ashland, Inc.

31. On information and belief, Ashland is the successor in interest to Ashland Chemical Company and Ashland Oil, Inc.

32. Ashland Chemical Company sold over 4600 lbs of PCE to CCI in 1969 from its facility in Argenta, Illinois.

_____(3) The Boeing Company

33. On information and belief, Boeing is the successor in interest to Rockwell International Corporation and the Rocketdyne Division ("Rocketdyne") of North American Aviation, Inc. ("North American").

34. During the 1960s, Rocketdyne sent over 400,000 lbs of used TCE to CCI from the former Rocketdyne Test Site in Neosho Missouri.

(4) CertainTeed Corp.

35. On at least two occasions in 1981, CertainTeed's Kansas City plant sent over 1800 lbs of waste trichloroethane and dichloromethane to the Site.

(5) Hallmark Cards, Inc.

36. On several occasions between 1978 and 1983 Hallmark sent 23,000 lbs of perchloroethylene and xylene to the Site from its Lawrence, Kansas facility.

(6) Honeywell Federal Manufacturing and Technologies LLC

37. On information and belief Defendant Honeywell is the successor in interest to Bendix Corporation, Allied Corporation, and AlliedSignal, Inc.

38. In 1977, Bendix sold 25,462 pounds of used TCE to CCI from a Site in Kansas City.

39. In 1978, AlliedSignal, sold CCI thirty 55-gallon drums of "perchloroethylene - vapor degreasing grade."

(7) Lucent Technologies, Inc. ,

40. On information and belief, Defendant Lucent is the successor in interest to the American Telephone & Telegraph Company ("AT&T"), Western Electric Company ("Western") and AT&T Technologies, Inc. ("AT&T Tech.").

41. In 1987, AT&T Tech. and Western sold at least 4400 pounds of TCE to CCI from its facilities in Winston-Salem, North Carolina and Omaha, Nebraska.

(8) Mallinckrodt Inc.

42. Between 1980 and 1986, Mallinckrodt sold at least 3700 lbs of hazardous chemicals to CCI, including lead acetate, TCE, sulfuric acid, and TCA.

FIRST CLAIM FOR RELIEF:

CLAIM FOR RECOVERY OF RESPONSE COSTS AGAINST BNSF

43. Paragraphs 1 through 42 are re-alleged and incorporated herein by reference.

44. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

“Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * *

shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan”

45. The Site, which contains hazardous substances, is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

46. There have been "releases," "threatened releases" and "disposals" of hazardous substances at or from the Site, as those terms are defined in Sections 101(22) and 101(29) of CERCLA, 42 U.S.C. §§ 9601(22) and (29).

47. Lead acetate, sulfuric acid, PCE, acetone, dichlorobenzene, TCE, 1,2-dichloroethane, 1,1,2,2-tetrachloroethane, benzoic acid, 2-butanone, TCA, carbon tetrachloride, acetone, 1,1-dichloroethane, and 1,2-dichlorobenzene are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

48. EPA has conducted studies to assess environmental harm and risks at the Site and has conducted a Removal Action to stabilize conditions at the Site. EPA's actions in response to releases and/or threatened releases of hazardous substances at or from the Site constitute "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and are not inconsistent with the National Contingency Plan, 40 C.F.R. § 300.1 et seq.

49. At the time hazardous substances were released or disposed of at the Site, BNSF and its predecessors were "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), who owned a facility at the Site at which hazardous substances were disposed of.

50. BNSF is the current owner of a facility at the Site at or from which hazardous substances have been released.

51. BNSF has succeeded to or assumed the liabilities of the St. Louis-San Francis Railway Company.

52. BNSF is therefore jointly and severally liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred by the United States in response to releases and/or threatened releases of hazardous substances at the Site, including prejudgment interest.

SECOND CLAIM FOR RELIEF

CLAIM FOR RECOVERY OF RESPONSE COSTS AGAINST ALLIANT, ASHLAND,
BOEING, CERTAINTEED, HALLMARK, HONEYWELL, LUCENT AND MALLINCKRODT

53. Paragraphs 1 through 52 are realleged and incorporated herein by reference.

54. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section –
... any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility ... owned or operated by another party or entity and containing such hazardous substances

* * *

shall be liable for –
... all costs of removal or remedial action incurred by the United States Government ... not inconsistent with the national contingency plan ...

55. The Site, which contains hazardous substances, is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

56. There have been "releases," "threatened releases" and "disposals" of hazardous substances at or from the Site, as those terms are defined in Sections 101(22) and 101(29) of CERCLA, 42 U.S.C. §§ 9601(22) and (29).

57. Lead acetate, sulfuric acid, PCE, acetone, dichlorobenzene, TCE, 1,2-dichloroethane, 1,1,2,2-tetrachloroethane, benzoic acid, 2-butanone, TCA, carbon tetrachloride, acetone, 1,1-dichloroethane, and 1,2-dichlorobenzene are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

58. EPA has conducted studies to assess environmental harm and risks at the Site and has conducted a Removal Action to stabilize conditions at the Site. EPA's actions in response to releases and/or threatened releases of hazardous substances at or from the Site constitute "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and are not inconsistent with the National Contingency Plan, 40 C.F.R. § 300.1 et seq.

59. At the time hazardous substances were released or disposed of at the Site, defendants and their predecessors were "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), who arranged with another person, by contract, agreement or otherwise, for the disposal, or for the transportation for disposal, of hazardous substances at the facility owned and operated by CCI.

60. Each defendant and/or its predecessors in interest by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances it owned or possessed, which hazardous substances were disposed of at the Site.

61. Alliant has succeeded to and/or has assumed the liabilities of Hercules Aerospace Company, Hercules, Inc., Thiokol Propulsion, Inc., Morton Thiokol Incorporated, Thiokol, Inc. and Cordant Technologies, Inc.

62. Ashland has succeeded to and/or has assumed the liabilities of Ashland Chemical Company and Ashland Oil, Inc.

63. Boeing has succeeded to and/or has assumed the liabilities of Rockwell International, Inc. and North American Aviation, Inc.

64. Honeywell has succeeded to and/or has assumed the liabilities of Bendix Corporation, Allied Corporation and AlliedSignal, Inc.

65. Lucent has succeeded to and/or assumed the liabilities of American Telephone and Telegraph Company, AT&T Technologies, Inc. and Western Electric Company.

66. Each defendant is jointly and severally liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred by the United States in response to releases and/or threatened releases of hazardous substances at the Site, including prejudgment interest.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the United States of America, respectfully requests that the Court:

- A. Enter judgment against defendants, jointly and severally for all costs incurred by the United States in response to releases or threatened releases of hazardous substances at the Site, including expenses and costs of enforcement.
- B. Award the United States prejudgment interest on its response costs.
- C. Grant such other and further relief as the Court deems just and proper.

s/Ellen Mahan
ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources
Division

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
USA V. ASHLAND CHEMICAL CO., ET AL.
COMPLAINT

s/Elizabeth L. Loeb

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REQUEST FOR PLACE OF TRIAL

The defendant, United States of America, requests that the above-entitled cause be placed on the docket for trial at the City of Wichita, Kansas.

s/Emily B. Metzger

EMILY B. METZGER

Assistant United States Attorney